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No. 5, Original

In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

DECREE PROPOSED BY THE UNITED STATES AND MEMORANDUM IN SUPPORT OF PROPOSED DECREE

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DECREE PROPOSED BY THE UNITED STATES

The United States having moved for entry of a supplemental decree herein, and the matter having been referred to the late William H. Davis as Special Master to hold hearings and recommend answers to certain questions with respect thereto, and the Special Master having held such hearings and having submitted his report, and the issues having been modified by the supplemental complaint of the United States and the answer of the State of California thereto, and the parties having filed amended exceptions to the report of the Special Master, and the Court having received briefs and heard argument with respect thereto and having by its opinion of May 17, 1965, approved the recommendations of the Special Master, with modifications, it is ORDERED, ADJUDGED AND DECREED that the decree heretofore

entered in this cause on October 27, 1947, 332 U.S. 804, be, and the same is hereby, modified to read as follows:

1. As against the State of California and all persons claiming under it, the subsoil and seabed of the continental shelf, more than three geographical miles seaward from the nearest point or points on the coast line, at all times pertinent hereto have appertained and now appertain to the United States and have been and now are subject to its exclusive jurisdiction, control and power of disposition. The State of California has no title thereto or property interest therein.

2. As used herein, "coast line" means—

(a) The line of mean lower low water on the mainland, on islands, and on low-tide elevations lying wholly or partly within three geographical miles from the line of mean lower low water on the mainland or on an island, and

(b) The line marking the seaward limit of inland waters.

The coast line is to be taken as heretofore or hereafter modified by natural or artificial means, and includes the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639.

3. As used herein—

(a) "Island" means a naturally-formed area of land surrounded by water, which is above the level of mean high water;

(b) "Low-tide elevation" means a naturally-formed area of land surrounded by water at mean lower low water, which is above the level of mean lower low water but not above the level of mean high water;

(c) "Mean lower low water" means the average elevation of all the daily lower low tides occurring over a period of 18.6 years;

(d) "Mean high water" means the average elevation of all the high tides occurring over a period of 18.6 years;

(e) "Geographical mile" means a distance of 1852 meters (6076.10333 . . . U.S. Survey Feet or approximately 6076.11549 International Feet).

4. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. The inland waters referred to in paragraph 2(b) hereof consist of—

(a) Any river or stream flowing directly into the sea, landward of a straight line across its mouth;

(b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;

(c) Any "historic bay", as that term is used in paragraph 6 of Article 7 of the Convention, defined essentially as a bay over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations;

(d) Any other bay (defined as a well-marked coastal indentation having such penetration, in proportion to the width of its entrance, as to contain land-locked waters, and having an area, including islands

within the bay, at least as great as the area of a semicircle whose diameter equals the length of the closing line across the entrance of the bay, or the sum of such closing lines if the bay has more than one entrance), landward of a straight line across its entrance or, if the entrance is more than 24 geographical miles wide, landward of a straight line not over 24 geographical miles long, drawn within the bay so as to enclose the greatest possible amount of water. An estuary of a river is treated in the same way as a bay.

5. In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway.

6. Roadsteads, waters between islands, and waters between islands and the mainland are not *per se* inland waters.

7. The inland waters of the Port of San Pedro are those enclosed by the breakwater and by straight lines across openings in the breakwater; but the limits of the port, east of the eastern end of the breakwater, are not determined by this decree.

8. The inland waters of Crescent City Harbor are those enclosed within the breakwaters and a straight line from the outer end of the west breakwater to the southern extremity of Whaler Island.

9. The inland waters of Monterey Bay are those enclosed by a straight line between Point Pinos and Point Santa Cruz.

10. The description of the inland waters of the Port of San Pedro, Crescent City Harbor, and Monterey Bay, as set forth in paragraphs 7, 8, and 9 hereof, does not imply that the three-mile limit is to be measured from the seaward limits of those inland waters in places where the three-mile limit is placed farther seaward by the application of any other provision of this decree.

11. The following are not historic inland waters, and do not comprise inland waters except to the extent that they may be enclosed by lines as hereinabove described for the enclosure of inland waters other than historic bays:

(a) Waters between the Santa Barbara or Channel Islands, or between those islands and the mainland;

(b) Waters adjacent to the coast between Point Conception and Point Hueneme;

(c) Waters adjacent to the coast between Point Fermin and Point Lasuen (identified as the bluffs at the end of the Las Bolsas Ridge at Huntington Beach);

(d) Waters adjacent to the coast between Point Lasuen and the western headland of Newport Bay;

(e) Santa Monica Bay;

(f) Crescent City Bay;

(g) San Luis Obispo Bay.

12. With the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313, and subject to the powers reserved to the United States by § 3(d) and § 6 of said Act, 43 U.S.C. §§1311(d) and 1314, the State of California is entitled, as against the United States, to the title to and ownership of the tidelands along its coast (defined as the shore of the mainland and of islands, between the line of mean high water and the line of mean lower low water) and the submerged lands, minerals, other natural resources and improvements underlying the inland waters and the waters of the Pacific Ocean within three geographical miles seaward from the coast line and bounded on the north and south by the northern and southern boundaries of the State of California, including the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State law. The United States is not entitled, as against the State of California, to any right, title or interest in or to said lands, improvements and natural resources except as provided by § 5 of the Submerged Lands Act.

13. The parties shall submit to the Court for its approval any stipulation or stipulations that they may enter into, identifying with greater particularity all or any part of the boundary line, as defined by this decree, between the submerged lands of the United States and the submerged lands of the State of California, or identifying any of the areas reserved to the United States by § 5 of the Submerged Lands

Act. As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may be unable to agree, either party may apply to the Court at any time for entry of a further supplemental decree.

14. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.

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In the Supreme Court of the United States

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MEMORANDUM IN SUPPORT OF PROPOSED DECREE

We understand that California agrees with the proposed decree submitted herewith, except that it would add a declaration that two matters remain unadjudicated, which the United States believes have in fact been decided by the Court. Those are the possibilities that the "coast line" may include lines marking the outer limits of (1) historic waters other than historic bays, and (2) straits leading only to inland waters. Besides adding an express reservation of those questions, California would preserve its position by having the second sentence of paragraph 4 (p. 3, *supra*) say that the inland waters referred to in paragraph 2(b) "include," rather than "consist of," the inland waters enumerated in paragraph 4.

We recognize that the Court did not deal with either of those subjects in express terms; but it did

hold that the "inland waters" referred to by the Submerged Lands Act are to be understood as being those waters now recognized as "internal waters" by the Convention on the Territorial Sea and the Contiguous Zone. 381 U.S. 139, 164–167. Article 3 of the Convention provides:

> Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

The Convention has "otherwise provided" only in the cases of straight baselines along certain irregular coasts (Art. 4); bays, including historic bays (Art. 7); harbors (Art. 8); and rivers (Art. 13). By requiring the baseline to follow the low-water line in all other places, the Convention necessarily rules out any other sort of inland waters as part of the baseline.

Since the Convention makes no exception for any sort of historic waters other than "historic bays," we understand the Court to have held that the Submerged Lands Act recognizes no others. We may assume that the word "bay" in the expression "historic bays" has a somewhat broader meaning than its usual one. Particularly, it is not limited to the restrictive definitions of paragraphs 2 and 3 of Article 7 of the Convention; paragraph 6 of that Article specifically so provides. Thus the Convention may sanction recognition as "historic bays" of areas that might not be considered bays in a usual sense. However, by providing that the term "historic bays" is

used in this decree in the same sense as in the Convention, the decree will recognize as historic inland waters whatever the Convention recognizes as historic inland waters. We see no warrant for going further.

The situation is the same with respect to straits leading only to inland waters. Where they come within the Article 7 definition of a bay, they are inland waters to the extent provided by that Article. Where they do not come within the provisions of either Article 4, 7, 8, or 13, we understand that the Convention denies them the status of inland waters (at least for purposes of defining the baseline of the territorial sea) and that the Court, by its adoption of the principles of the Convention, has so ruled. California's suggestion that the status of such straits should be left open seems to us contrary to the Court's holding.

The parties agree that subsequent developments, including passage of the Submerged Lands Act, have so substantially affected the 1947 decree that it will be more satisfactory to make the present decree a complete, self-contained declaration of their present rights, rather than a mere modification of and supplement to the former decree. For this reason, we suggest the language that the 1947 decree is "modified to read" as is now proposed.

The following discussion explains briefly the precise basis for each provision of the proposed decree. The paragraphs are numbered to correspond to the paragraphs of the proposed decree.

1. Section 3(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1332(a), declares that "the subsoil

and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act." Section 2(b) of the Submerged Lands Act, 43 U.S.C. 1301(b), provides that in no event shall the submerged lands granted to the States by that Act "be interpreted as extending from the coast line more than three geographical miles into the * * * Pacific Ocean * * *." To make specific the understanding of both parties that the three miles should be measured to the nearest part of the coast line, in accordance with Article 6 of the Convention on the Territorial Sea and the Contiguous Zone, rather than by some other method such as the so-called *tracé parallèle* (see 1 Shalowitz, *Shore and Sea Boundaries* (1962) 169–172), we have followed the Convention in specifying that the three miles be measured to the "nearest point" on the coast line, but for greater accuracy have added "or points" because at an interior angle of the three-mile line the turning point is equidistant from two points on the coast line.

Paragraph 1 of the 1947 decree herein, referring to the area there adjudicated, provided (332 U.S. at 805), "The State of California has no title thereto or property interest therein."

2. Section 2(c) of the Submerged Lands Act, 43 U.S.C. 1301(c), defines "coast line" as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The Court has held that in the present case "ordinary low water" is "mean lower low water." 381 U.S. at

175–176. The Special Master recommended that the baseline of territorial waters "should be measured in each instance along the shore of the adjoining mainland or island, each island having its own marginal belt." Report, pp. 3, 27. The Convention on the Territorial Sea and the Contiguous Zone provides that the base line of the territorial sea includes the low water line along the coast (Art. 3), around islands (Art. 10, par. 2) and around low-tide elevations "situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island" (Art. 11, par. 1).

The Court has held that the coast line is to be taken as modified from time to time by natural or artificial means. 381 U.S. at 176–177. The Convention on the Territorial Sea and the Contiguous Zone provides (Art. 8) that "the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast." The International Law Commission, in commenting on that provision in the convention draft submitted by its Report Covering the Work of Its Eighth Session, 23 April–4 July 1956 (United Nations General Assembly Official Records: Eleventh Session, Supplement No. 9 (A/3159), p. 16),[1] said:

> (2) Permanent structures erected on the coast and jutting out to sea (such as jetties and coast protective works) are assimilated to harbour works.

[1] Also reprinted in 2 *Yearbook of the International Law Commission, 1956*, pp. 253, 270, and in 51 *American Journal of International Law*, pp. 154, 188.

> (3) Where such structures are of excessive length (for instance, a jetty extending several kilometres into the sea), it may be asked whether this article could still be applied or whether it would not be necessary, in such cases, to adopt the system of safety zones provided for in article 71 for installations on the continental shelf.[2] As such cases are very rare, the Commission, while wishing to draw attention to the matter, did not deem it necessary to state an opinion.

Though not embodied in the language of the Convention, this comment expresses the present practice of the United States in its international relations; but it requires both amplification and qualification to make it a complete or accurate exposition of that practice. The subject has not been considered by the Special Master or the Court, and it seems inappropriate to go into it in this decree. We suggest that all that can or should be done now is to specify that the term "harbor works" has the same scope in this decree as in the Convention.

3. (a) Article 10, paragraph 1 of the Convention on the Territorial Sea and the Contiguous Zone defines an island as "a naturally-formed area of land, surrounded by water, which is above water at high-tide." We would substitute "above the level of mean high water" for greater precision, to make clear that the criterion is mean water level, rather than unusually high tides or incidental wave action.

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[2] Corresponding to Art. 5 of the Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 471, 473–474.

(b) Article 11, paragraph 1 of the Convention defines a low-tide elevation as "a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide." Our proposed modifications are like those under (a), *supra.*

(c) The Special Master recommended that "The 'ordinary low-water mark on the coast of California' is the intersection with the shoreline (as it exists at the time of survey) of the plane of the mean of all low waters, to be established, subject to the approval of the Court, by the United States Coast & Geodetic Survey from observations made over a period of 18.6 years." Report, pp. 4–5. Use of the 18.6-year tidal cycle follows the practice approved by the Court in *Borax, Ltd.* v. *Los Angeles,* 296 U.S. 10, 26–27. We suggest referring to "tides occurring" rather than "observations made" over a period of 18.6 years, as there are recognized procedures whereby the average level over 18.6 years can be ascertained from observations made over a much shorter period, by relating them to observations made elsewhere for the full 18.6 years.

(d) This follows the holding in *Borax, Ltd.* v. *Los Angeles,* 296 U.S. 10, 26–27, and is included to give precision to paragraphs 3(a) and 3(b).

(e) The Court has not considered the exact definition of a geographical mile in this case, beyond stating, "One English, statute, or land mile equals approximately .87 geographical, marine, or nautical mile. The conventional '3-mile limit' under international law refers to three geographical miles, or approximately 3.45 land miles." 381 U.S. at 148, fn.

8; accord, *United States* v. *Louisiana,* 363 U.S. 1, 17, fn. 15. Because of variations in the exact definition of a geographical mile, and because the three-mile limit established under this decree will be the basis for precise surveys of the submerged lands, the parties agree that an exact definition should be specified.

Conceptually, a geographical mile equals the length of one minute of latitude along a meridian on the surface of the earth; but different countries have given it differing values at various times. Moreover, since the earth is oblate, the length of a minute of latitude differs slightly in different latitudes. Formerly, the United States valued a geographical mile at 1,853.248 meters or 6080.2 feet, but on July 1, 1954, the Department of Defense and the Department of Commerce (including the National Bureau of Standards) adopted the International Geographical Mile of 1852 meters. Using the then accepted relationship that one foot equaled 1200/3937 meters, this gave the geographical mile a value of 6076.10333 . . . feet. *Technical News Bulletin of the National Bureau of Standards,* Aug. 1954;[3] see also Department of Defense Directive No. 2045.1, June 17, 1954. On July 1, 1959, the National Bureau of Standards announced a refinement of the metric value of a foot, to make one yard equal 0.9144 meters. This gave the International Geographical Mile a value of approximately

[3] The periods indicating a continuing decimal were inadvertently omitted in the original publication of the *Technical News Bulletin*, but were restored in subsequent reprints of the announcement.

6076.11549 "International Feet." 24 Fed. Reg. 5348 (July 1, 1959). However, that announcement provided that until further notice a foot having the former value of 1200/3937 meters, to be known as a "U.S. Survey Foot," should be used with respect to geodetic surveys within the United States. See *Units of Weight and Measure* (National Bureau of Standards Miscellaneous Publication 233, 1960) p. 2. While strict logic might suggest that the Submerged Lands Act should be construed as referring to the geographical mile that was recognized when it was enacted (*i.e.*, 6080.2 feet or 1,853.248 meters), the parties recognize certain practical advantages in using the more recent international geographical mile, and California does not object to the slight disadvantage that it will suffer thereby, amounting to about 12.28 feet in the width of the marginal belt.

4. This effectuates the Court's holding that "inland waters" under the Submerged Lands Act are those waters now recognized as "internal waters" under the Convention on the Territorial Sea and the Contiguous Zone. 381 U.S. at 164–167. The Convention provides (Art. 3) "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast * * *." It is "otherwise provided" only as to "straight baselines" on certain irregular coasts (Art. 4), bays (Art. 7), harbors (Art. 8), and rivers (Art. 13). The Convention makes no other exception to the requirement that the baseline follow the low-water line. Since the Court has rejected California's claim to "straight baselines" under Article 4 (381 U.S. at

167–169), the inland waters referred to in paragraph 2(b) are necessarily limited to rivers, ports, and bays (including historic bays, if any).

(a) The Special Master recommended that "Where rivers empty into the sea, the seaward limit of inland waters is a line following the general direction of the coast drawn across the mouth of the river whatever its width." Report, p. 4. Article 13 of the Convention provides that "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks." We omit reference to the low-tide line here and elsewhere in paragraph 4 because the subject is covered by paragraph 5.

(b) The Court held (381 U.S. at 175):

> The Convention on the Territorial Sea and the Contiguous Zone (Art. 8) states without qualification that "the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast." We take that to be the line incorporated in the Submerged Lands Act.

The addition of a straight line across the entrance is necessarily implied, though not expressed either by the Convention or by the Special Master (see Report, pp. 4, 46–48).

(c) Article 7 of the Convention, defining the internal waters of bays, provides (par. 6), "The foregoing provisions shall not apply to so-called 'historic' bays * * *." Of historic bays, the Court said (381 U.S. at 172), "Essentially these are bays over which a coastal nation has traditionally asserted and

maintained dominion with the acquiescence of foreign nations." Aside from Monterey Bay (where application of the 24-mile and semicircle rules rendered the question academic), the Court held (381 U.S. at 173), "As to Santa Monica Bay, San Pedro Bay, and the other water areas in dispute, we agree with the Special Master that they are not historic inland waters of the United States." However, we include historic bays in this enumeration of inland waters to be considered in drawing California's coast line because it remains open to California to assert historic claims as to segments of the coast not yet specifically adjudicated.

(d) Article 7 of the Convention includes the following:

> 2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
>
> 3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the

different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

The Special Master recommended (Report, p. 4): "If the river flows into an estuary, the rules applicable to bays apply to the estuary." The Convention contains no corresponding provision; but we understand the Special Master's recommendation as, in effect, a clarification of what is included in the term "bay." As such, it is entirely consistent with the provisions of the Convention and so is understood to be a part of the Report approved by the Court without modification. 381 U.S. at 177.

5. Articles 7 and 13 of the Convention, quoted under 4(d) and 4(a), *supra,* provide for drawing the closing lines of bays and rivers to the low-water marks on the headlands or banks. The Special Master recommended (Report, p. 4):

> Where pronounced headlands exist at tributary waterways, the appropriate landmark is the point of intersection of the plane of

> ordinary low water with the outermost extension of the natural headland. Where there is no pronounced headland, the landmark is the point of intersection of the ordinary low-water mark with a line bisecting the angle between the general trend line of the ordinary low-water mark along the open coast and the general trend line of the ordinary low-water mark along the shore of the tributary waterway.

We believe that these methods of establishing the exact entrance points of a body of inland waters are consistent with, and appropriately supplement, the provisions of the Convention on the Territorial Sea and the Contiguous Zone which refer only in general terms to the "mouth" of a river or the "natural entrance points" of a bay. As such, they are understood to be a part of the Report approved by the Court without modification. 381 U.S. at 177.

6. The Court held (381 U.S. at 175):

> As to open roadsteads used for loading, unloading and anchoring ships, the Convention (Art. 9) provides that such areas should be included in the territorial sea, and, by implication, that they are not to be considered inland waters. We adopt that interpretation.

The Convention makes no provision for treating waters between islands, or between islands and the mainland, as inland waters, except where straight baselines are drawn under Article 4. By necessary implication, Article 3 therefore denies them the status of inland waters. See discussion under 4, *supra*. The Special Master recommended (Report, pp. 2–3):

> The channels and other water areas between the mainland and the offshore islands within the area referred to by California as the "overall unit area"[2] are not inland waters. They lie seaward of the baseline of the marginal belt of territorial waters, which should be measured in each instance along the shore of the adjoining mainland or island, each island having its own marginal belt.

[2] Second chart opposite p. 30 of California's brief in this Court of July 31, 1951, entitled "Brief in Relation to Report of Special Master of May 22, 1951", and Chart Cal. Exhs. A and B.

See also Report, pp. 26–27. The Court agreed. 381 U.S. at 170–172, 177.

7. The second coastal segment submitted to the Special Master for consideration was "San Pedro Bay." See 381 U.S. at 143, fn. 3. The Special Master recommended that "No one of the seven particular coastal segments now under consideration for precise determination and adjudication is a bay constituting inland waters." Report, p. 3. The Court held (381 U.S. at 169–170, footnotes omitted):

> The Convention recognizes, and it is the present United States position, that a 24-mile closing rule together with the semicircle test should be used for classifying bays in the United States. Applying these tests to the segments of California's coast here in dispute, it appears that Monterey Bay is inland water and that none of the other coastal segments in dispute fulfill these aspects of the Convention test. We so hold.

It follows that the inland waters at San Pedro Bay are limited to those within the harbor works, under paragraphs 2 and 4(b) of the proposed decree. Neither the Special Master nor the Court considered how the closing line should be drawn from the eastern end of the breakwater, and the parties are in disagreement on the subject. The question must therefore be left open by the present decree.

8. The fourth coastal segment submitted to the Special Master for consideration was "Crescent City Bay." See 381 U.S. at 143, fn. 3. As at San Pedro (7, *supra*), the inland waters are limited to those within the harbor works. Neither the Special Master nor the Court considered how the closing line across the entrance to the harbor should be drawn, but as the parties are in agreement regarding it, it is included here, for completeness, as a matter of convenience.

9. The Court held Monterey Bay to be inland waters. 381 U.S. 170, quoted under 7, *supra*. The entrance points of the bay were not specifically identified by the Special Master or by the Court, but they are not in dispute and so are included here for completeness. See map opposite page 152, Vol. II, Appendices to Brief in Support of Exceptions of the State of California to the Report of the Special Master Dated October 14, 1952.

10. This paragraph is included at California's request. We do not object, but consider it unnecessary because it is always the most seaward elements of the coast line that control the position of the three-mile line.

11. The Court held (381 U.S. at 173):

> Since the 24-mile rule includes Monterey Bay, we do not consider it here. As to Santa Monica Bay, San Pedro Bay, and the other water areas in dispute, we agree with the Special Master that they are not historic inland waters of the United States.

The areas enumerated in paragraph 11 correspond to the "over-all unit area" and the segments submitted to the Special Master, other than Monterey Bay. See 381 U.S. at 143, fn. 3. The wording of 11(c) is suggested as a substitute for "San Pedro Bay" for greater definiteness. The parties agreed that the northwestern headland of the bay is at Point Fermin, but disagreed as to whether the southeastern headland, called Point Lasuen, is at Huntington Beach as claimed by the United States or at Newport Beach as claimed by California. Recommending that the bay as such was not inland waters, the Special Master found it unnecessary to identify the southeastern headland; but he added that if it were necessary, "then I would recommend that the contention of California as to the southeastern headland should be rejected, and the contention of the United States accepted, on the evidence submitted, particularly the testimony of Mr. Shalowitz for the United States (Tr. 1219–1235)." Report, pp. 36–37. Mr. Shalowitz testified (Tr. 1225), "Point Lasuen is the name given by George Vancouver to the shore termination of a low ridge or bluff near the present-day Huntington Beach" and (quoting from the *Pacific Coast Pilot* of 1889, Tr. 1246 at 1251):

> "Twenty miles north sixty-five degrees west from Point Capistrano and fourteen miles north eighty-six degrees east from Point Fermin, is the low bluff, nearly two miles in extent, named Lasuen. It is the shore termination of the long, rolling bare hillock called Las Bolsas."

Now, "California recognizes that historically the southerly terminus of San Pedro Bay is at Point Lasuen at Huntington Beach." Vol II, Appendices to Brief in Support of Exceptions of the State of California to the Report of the Special Master Dated October 14, 1952, p. 105. Since there has been this uncertainty as to the proper extent of the area called "San Pedro Bay," we suggest that the decree will be more precise if it specifically refers to and identifies Point Lasuen.

12. Section 3(a) of the Submerged Lands Act, 43 U.S.C. 1311, provides:

> It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

The natural resources within the waters, as distinguished from those within the submerged lands, are beyond the issues in the present case, and it would be inappropriate for the decree to deal with them. In other respects, we suggest that the scope of the State's rights be described in the terms of the statute from which they are derived.

Section 5 of the Act, 43 U.S.C. 1313, enumerates various exceptions from the statutory grant. No attempt has yet been made in this case to identify specific areas thus excepted from the grant to California (see the United States Motion for Leave to File Supplemental Complaint or Original Complaint, pp. 7–8, fn. 2), and we suggest that the exceptions merely be noted in general terms, as was done in paragraph 2 of the decree of December 12, 1960, in *United States* v. *Louisiana*, 364 U.S. 502, 503. In addition to those exceptions of property rights, sections 3(d) and 6 of the Submerged Lands Act, 43 U.S.C. 1311(d) and 1314, declare that the grant made to the States by the Act does not detract from governmental powers of the United States over the areas granted. There was no reference to those sections in the *Louisiana* decree, *supra*, and we see no need for such reference here, but have no objection to it and include it at California's request.

The original decree herein referred to the area extending three nautical miles seaward from the ordinary low-water mark on "the coast of California." 332 U.S. at 805. Section 2 of the Submerged Lands Act, 43 U.S.C. 1301, defines the "lands beneath navigable waters" granted to each State by that Act as

extending three geographical miles from "the coast line of each such State" or to its historic boundary, but not more than three geographical miles from "the coast line" into the Pacific or Atlantic Oceans. In our proposed decree we use the more general expression of the latter limitation, "the coast line," rather than referring specifically to "the coast of California." We do this because of a situation at the Oregon boundary, where there is a small offshore area that is within the national three-mile belt because within three miles of the Oregon coast, but is south of the Oregon boundary and more than three miles from any part of the coast of California. To limit California to the area within three miles of its own coast would leave that small portion of the national three-mile belt outside any State. To avoid this anomaly, we suggest that California is entitled to the offshore area, between its northern and southern boundaries, within three miles of *the* coast, even if more than three miles from *its* coast.

13. After announcement of the Court's opinion herein on June 23, 1947, the parties filed a stipulation recognizing the status of certain areas as inland waters. See Decree Proposed by the United States and Memorandum in Support of Proposed Decree [September 1947], Appendix C, pp. 20–22. By its order of October 27, 1947, 332 U.S. 804, 805, the Court ordered that stipulation stricken as "irrelevant to any issues now before" the Court. We suggest that our supplemental complaint and motion for entry of a supplemental decree have now rendered relevant the precise identification of the respective federal and

state submerged lands, and that it is now appropriate to permit the parties to seek further supplemental decrees for that purpose, either by stipulation or in contested proceedings.

14. Issues remaining unresolved include specific description of portions of the coast line not fixed by this decree, and identification of areas reserved to the United States by section 5 of the Submerged Lands Act, 43 U.S.C. 1313, among others. Retention of jurisdiction by the Court is appropriate.

Respectfully submitted.

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